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## CONGRESS AND ANARCHY: A SUGGESTION.

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THE desirability of securing uniformity throughout the Union in the laws regulating trade, commerce, marriage and divorce, citizenship, and the treatment of such diseases as insanity and phthisis has been increasingly apparent in recent years. Some progress has been made in this direction. In many of the States practically uniform enactments have been made as to rules affecting commercial paper, and, since the recent cases of kidnapping, numerous measures of severity have been introduced into the legislatures of Iowa, Wisconsin, South Dakota, North Dakota and Wyoming, as well as of some Eastern States.

Uniformity of State legislation can only be obtained by the legislatures of all the States passing and their Governors signing laws which shall be essentially identical. That this should be done so far as concerns the regulation of marriage and divorce, insanity, the conditions of State citizenship, arrest of the person and attachment of property, the qualifications for the right to practice certain professions, the crime of kidnapping, and perhaps the use of hypnotism and the custody and treatment of the sufferers from phthisis, many authorities agree. Under the Constitution of the United States these subjects can be dealt with only by the sovereign States.

So far, experience has shown it to be so difficult as to be almost impossible to bring about the passage of uniform State laws.

It is true that a German Code of Commerce, drawn under a resolution of the Frankfort Diet, some years ago, was enacted into law by the legislative bodies of the practically independent German states. This, it has been argued, shows that communities connected by bonds of trade, and of a common race and speech, can be bound still more closely by common laws.

It is also true that the States of Massachusetts, Pennsylvania, Michigan, Delaware, New Jersey, Georgia and New York have appointed Commissioners, from year to year in the past decade, to devise a plan for securing uniform State legislation, and that these Commissioners have had a number of meetings, at some of which as many as thirty-one States have been represented.

But no uniform law has yet been enacted.

There are "many men of many minds" in each of the two bodies which constitute each State legislature; and there are forty-six States.

How mighty must be the impulse, and how far reaching, that will impress with a common purpose and a common zeal the majority in each of these double legislatures!

The universal detestation felt for the crimes of anarchy might suffice to ensure this result. Had every State legislature been in session when the attempt was made on the life of President McKinley, in Buffalo, had practiced hands prepared immediately and presented to all the legislatures a uniform enactment against anarchistic incitement to crime, against attempts at violence in pursuance of such incitement, as well as against the overt act of assassination itself, then in the heat of popular indignation all the legislatures might have passed and all the Governors signed such a bill. And yet had laws been passed under the hurried pressure of such excitement, the courts called upon to construe them would probably have found them contravening that provision of our Constitution which permits a freedom of speech by many believed to be dangerous.

The difficulty of securing uniform State legislation upon any subject leads many to advocate such amendments of the Federal Constitution as will enable Congress to legislate upon many subjects now forbidden to it. But to secure an amendment to the

Constitution enlarging the powers of Congress will be found as difficult, I may almost say as impossible, as to secure uniform State laws. In order to become an amendment to the Constitution of the United States, a measure must be proposed by both Houses of Congress by a two-thirds majority, or by a convention called on application of the legislatures of two-thirds of the States, and after being so proposed must be introduced into the legislatures of all the States and be ratified by the legislatures of three-fourths of the States. Considering the views of the people of at least one-third of the States upon the question of State sovereignty, it is doubtful whether the Constitution will ever again be amended so as to increase Federal power.

It has been suggested that attempts upon the life of the President and other high officials be made treason. This would be impossible without an amendment to the Constitution of the United States, which defines treason to consist only in levying war upon the United States or in adhering to their enemies, giving them aid and comfort.

Neither can freedom of speech nor of the press be abridged without an amendment to the Constitution.

It is fortunately not necessary to wait for uniform State legislation nor an amendment of the Federal Constitution in order to take steps which might prove efficacious against the hideous crime of anarchy.

There is in the Government of the United States an inherent power to deal practically with anarchists.

This power is clear when anarchists assault or threaten to assault officials of the Government in the discharge of the official duties.

"It is inherent in the executive department of any Government to protect itself" (L. R. A., vol. 5., p. 91). It is the duty of the President, under Article II., Section 3, of the Constitution, to "take care that the laws be faithfully executed," wherever he may be. It was said that "the Chambers of the Judge are wherever he happens to be in his Circuit" (in re Neagle), in which case the United States Circuit Court in California held United States Marshal Neagle not answerable to the State tribunals, and to have been acting only in accordance with his duty as a Federal peace officer, when, on August 14, 1889, he shot and killed Judge Terry as the latter was in the act of assaulting Justice Stephen Field.

The President's obligation to "take care that the laws be faithfully executed" rests on him wherever he is in the United States. The inherent power of the Government to protect his person seems to follow him.

In *Ex Parte Siebold* the Supreme Court of the United States declared:

"We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it." Is not the power of self-protection the chief of these?

If the power of appointment of United States peace officers to guard the President should be held not clear under existing statutes, "Congress has power," the Supreme Court of the United States decided in *Ex Parte Royal* (17 U. S., 249) "to pass all laws necessary and proper to carry into execution the powers vested by the Constitution in the Government of the United States."

Congress certainly has power, if severer laws are necessary, to make all attempts upon the life of the President of the United States, or other high officials, including all conspiracies of a like nature, punishable with death. It also has power to prevent the importation into the United States of persons known to hold anarchistic sentiments, whose presence would be dangerous to our peace and security.

The present emergency demands Federal rather than State legislation, and need not await the delay and uncertainty of Constitutional amendment.

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